

Application No. 10/750,402
Response dated June 23, 2006
Reply to Office Action of March 27, 2006

REMARKS

Claims 34, 38, 39, 43-45, and 48-51 are presented for Examiner Chapman's consideration.

Claims 35, 36, 37, 40, 41, 42, and 47 are canceled.

Claims 1-33 and 46 were previously canceled.

Claim 34 has been amended to incorporate the limitations of original claims 35, 37, and 47. No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and remarks and the following responses is respectfully requested.

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Response to Rejections

By way of the Office Action mailed March 27, 2006, claims 34, 35, 38, 39, 40-45, 47 and 51 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,482,191 to Roe *et al.* (Roe) in view of U.S. Patent Number 5,817,086 to Kling (*Kling*) and further in view of U.S. Patent Number 4,935,021 to Huffman *et al.* (*Huffman*). This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

Claims 35, 40-42, and 47 have been canceled rendering the rejections as to these claims moot.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143.

The combination of Roe, Kling, and Huffman fail to teach or suggest all the claim limitations. Applicants' currently amended claim 34, reproduced below, requires that the outer layer be **elastic**.

34. A disposable absorbent garment, the disposable absorbent garment comprising:

an elastic outer layer having an outer layer perimeter;

an elastic inner layer, wherein the elastic inner layer has an elastic inner layer perimeter and wherein the elastic inner layer defines an opening located in an internal position to the elastic inner layer perimeter; wherein the elastic inner layer perimeter is bonded to the outer layer perimeter with a plurality of ultrasonic, adhesive or thermal bonds; and

an absorbent assembly positioned between the outer layer and the elastic inner layer, wherein the absorbent assembly includes a topsheet layer, a core layer and a barrier layer.

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The Examiner acknowledges on page 4 of the office action that "Roe as modified by Kling and Huffman is silent on the outer layer." Therefore, the combination clearly fails to teach or suggest an "elastic" outer cover. To remedy this deficiency, the Examiner cites *Repke* as disclosing "an outer layer that is elastic (col. 5,II.27)."

Applicants respectfully disagree with the Examiner's reading of *Repke*. The outer layer of *Repke* is "stretchable" but not "elastic" as required by Applicants' currently presented claim 34. The difference between "stretchable" and "elastic" is addressed by Applicants' specification at page 3, lines 15-18, which states,

Stretchable materials may include materials that are extensible and materials that are elastic. "Extensible" materials typically have lower capacities to retract to their original lengths after stretching while "elastic" materials typically have a greater range of stretch and come close to completely retracting to their original lengths after stretching. (emphasis added).

Repke discloses an outer layer that is extensible but not elastic. For example, *Repke* discloses at column 2, lines 28-33 that

the non-woven outer fabric layer, as well as the non-woven inner fabric layer, are micropleated in the machine direction of the fabric and compacted in the cross-direction of the fabric to give enhanced **stretch** or **extensibility** characteristics. (emphasis added).

Repke further teaches at column 4, lines 41-46 that

the non-woven web can be made stretchable by compressive shrinking, preferably by compacting the fabric in the cross direction and micropleating in the machine direction, so that the **extensibility** to rupture preferably is at least about 30 percent. (emphasis added).

Repke also defines the word "elastic" at column 11, lines 26-30, stating

The term "elastic," as used herein, refers to sheets, films, ribbons and the like which have a recovery of at least 90 percent, when elongated to within 10 percent of their yield point....

This definition is not inconsistent with Applicants' definition and it should be noted that ***Repke* does not use the word "elastic" to describe the outer layer.**

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Finally, *Repke* states at column 15, lines 36-38 that

the relaxed elastic members 426 assist in the recovery of the micropleated fabrics after extension.

This provides further evidence that the outer layer of *Repke* is not elastic and therefore requires the addition of elastic members 426 to recover. Therefore, *Repke* does not teach an "elastic" outer layer but only an extensible outer layer. Therefore, the addition of *Repke* does not cure the deficiencies of the combination of *Roe*, *Kling*, and *Huffman* and claim 34 is patentably distinct over the cited art for at least this reason. Claims 35, 38, 39, 40-45, 47 and 51 depend from claim 34 and are patentably distinct over the cited combination for at least the same reasons as claim 34. Applicants respectfully request that this rejection be withdrawn.

By way of the Office Action mailed March 27, 2006, claims 48 and 49 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,482,191 to *Roe et al. (Roe)*, U.S. Patent Number 5,817,086 to *Kling (Kling)*, U.S. Patent Number 4,935,021 to *Huffman et al. (Huffman)* and further in view of U.S. Patent Number 5,269,775 to *Freeland et al. (Freeland)*. This rejection is respectfully traversed to the extent that it may apply to the currently presented claims.

As discussed above, the combination of *Roe*, *Kling*, *Huffman*, and *Repke* fail to teach all the claim elements of currently presented claim 34, namely an elastic outer layer. The addition of *Freeland* does not cure this deficiency. Therefore, the combination of *Roe*, *Kling*, *Huffman*, *Repke*, and *Freeland* fails to teach or suggest all the claim limitations of currently presented claim 34. Claims 48 and 49 depend from claim 34 and are patentably distinct over the cited combination for at least the same reason. Applicants respectfully request that the rejection as to these claims be withdrawn.

By way of the Office Action mailed March 27, 2006, claim 50 stands rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 6,482,191 to *Roe et al. (Roe)*, U.S. Patent Number 5,817,086 to *Kling (Kling)*, U.S. Patent Number 4,935,021 to *Huffman et al. (Huffman)* and further in view of U.S. Patent Number 5,997,981 to *McCormack et al. (McCormack)*. This rejection is

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respectfully traversed to the extent that it may apply to the currently presented claims.

As discussed above, the combination of *Roe*, *Kling*, *Huffman*, and *Repke* fail to teach all the claim elements of currently presented claim 34, namely an elastic outer layer. The addition of *McCormack* does not cure this deficiency. Therefore, the combination of *Roe*, *Kling*, *Huffman*, *Repke*, and *McCormack* fails to teach or suggest all the claim limitations of currently presented claim 34. Claim 50 depends from claim 34 and is patentably distinct over the cited combination for at least the same reason. Applicants respectfully request that the rejection as to this claim be withdrawn.

For at least the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: 920-721-3016.

Respectfully submitted,

Paul T. Van Gompel et al.

By:



David J. Arteman

Registration No.: 44,512